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CHRISTOPHER A. COONS, DELAWARE  
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## United States Senate

COMMITTEE ON FOREIGN RELATIONS

WASHINGTON, DC 20510-6225

October 29, 2019

The Honorable Henry Kerner  
Special Counsel  
U.S. Office of Special Counsel  
1730 M Street, N.W.  
Washington, D.C. 20036

Dear Special Counsel Kerner:

I write to request an immediate review and assessment of the Secretary of State's compliance with the Hatch Act, 5 U.S.C. §§ 7321-7326.

The Hatch Act prohibits federal employees from using their official authority or influence to affect the result of an election and from soliciting or accepting contributions for partisan political purposes.<sup>1</sup> Federal employees may not engage in political activity while on duty, in uniform, or in a government building or vehicle.<sup>2</sup>

The Hatch Act has also been interpreted to prohibit preliminary activities regarding candidacy. As the OSC has noted, "any action that can reasonably be construed as evidence that an individual is seeking support for or undertaking an initial 'campaign' to secure a nomination or election to office would be viewed as candidacy for purposes of the Hatch Act."<sup>3</sup> A 1999 OSC opinion cautions federal employees to therefore "take great pains" to avoid engaging in any activities that would be prohibited by the Act.<sup>4</sup>

Since March 2019, the Secretary has taken three official trips to Kansas, apparently at the expense of the Department of State. During the latest trip, from October 24 to 25, 2019, the Secretary visited the Wichita State University Tech National Center for Aviation Training, participated in a workforce development roundtable, visited Textron Aviation Longitude and Latitude Production, and met with students from Wichita State University.<sup>5</sup>

In an interview, he refused to discuss matters related to Ukraine, insisting he was "here today to talk about workforce development. I came here today to talk about the great things that are going on here in Kansas." The events in Kansas were aimed largely at promoting the President's

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<sup>1</sup> 5 U.S.C. § 7323(a)(1)-(2).

<sup>2</sup> *Id.* § 7324(a).

<sup>3</sup> Advisory Opinion, Office of the Special Counsel, OSC File No. AD-09-xxxx, June 17, 2009, available at <https://osc.gov/Documents/Hatch%20Act/Advisory%20Opinions/Federal/When%20Candidacy%20Begins.pdf>.

<sup>4</sup> Advisory Opinion, Office of the Special Counsel, Mar. 19, 1999, available at <https://osc.gov/Documents/Hatch%20Act/Advisory%20Opinions/Federal/Testing%20the%20Waters%20to%20Begin%20a%20Candidacy%20.pdf>.

<sup>5</sup> Public Schedule, for October 24 and 25, 2019, Secretary Michael R. Pompeo, <https://www.state.gov/public-schedule-october-24-2019/>; <https://www.state.gov/public-schedule-october-25-2019/>.

“Pledge to American Workers,” which has no discernible relation to the Department of State. According to *The Wall Street Journal*, he also “discussed the U.S. Senate race in Kansas” with Charles Koch, the head of Koch Industries, and former top contributor to his political campaigns, as well as backer of Pompeo’s prior business.<sup>6</sup> Textron Inc., the parent company of Textron Aviation, was also a major contributor to then-Congressman Pompeo’s political campaigns.

For months, public reports have persisted that the Secretary was considering running for U.S. Senate in Kansas.<sup>7</sup> Many in Kansas perceive his appearances in the state to be a *de facto* campaign effort.<sup>8</sup> Indeed, an October 25, 2019 *Kansas City Star* editorial titled “Mike Pompeo, either quit and run for U.S. Senate in Kansas or focus on your day job,” seems to indicate his actions are already being construed as evidence of a possible candidacy by members of the press and the public in Kansas.<sup>9</sup> And following his trip, the Department of State’s official twitter handle posted a workforce and Kansas-centric video montage of the Secretary’s visit, which appears to have no nexus to the Department’s official work.<sup>10</sup>

Secretary Pompeo is not any federal employee. Rather, he is one of the most prominent members of the President’s cabinet. He appears frequently on TV and for interviews, and, as is true for many Secretaries of State, is known and recognized by the American public. Thus, it is even more crucial that he and the Department maintain a clear line between his actions as a federal employee and steward of the U.S. government, and any efforts that could be perceived as political in nature or laying the groundwork for potential campaign activity. I therefore ask that you review his travel and his interactions in Kansas closely, and determine whether any violations have occurred or additional guidance to the Department or the Secretary may be warranted.

The Trump Administration has a history of repeated Hatch Act violations and refusal to follow OSC recommendations. Last year, six White House officials were found to be in violation of the Hatch Act and in June of this year the White House’s ignored the OSC’s recommendation to fire White House counselor Kellyanne Conway for extensive and repeated Hatch Act violations.<sup>11</sup> Given none of these Administration officials have received reprimand from the White House, Secretary Pompeo’s actions warrant the OSC’s careful review.

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<sup>6</sup> Lindsey Wise, “Pompeo Discusses Senate Race in Kansas With Koch,” *The Wall Street Journal*, Oct. 26, 2019; Susan B. Glasser, “Mike Pompeo, the Secretary of Trump,” *The New Yorker*, Aug. 19, 2019.

<sup>7</sup> See, e.g. Jonathan Shorman & Lindsay Wise, “Pompeo discourages speculation on Kansas Senate race, but leaves door open a bit,” *McClatchy*, Jan. 23, 2019; Lindsey Wise, “Pompeo Says Senate Run Is ‘Off the Table.’ His Actions Are Suggesting Otherwise,” *The Wall Street Journal*, Jul. 3, 2019; Maggie Haberman and Lara Jakes, “Pompeo Fuels Further Talk of Senate Race,” *New York Times*, Aug. 21, 2019.

<sup>8</sup> Jonathan Shorman & Bryan Lowry, “Pompeo’s challenges mount as he cultivates profile with 4th Kansas trip this year,” *The Wichita Eagle*, Oct. 27, 2019 (noting “Secretary of State Mike Pompeo’s official trip back to Kansas this week could have been mistaken for a campaign swing”).

<sup>9</sup> Editorial, “Mike Pompeo, either quit and run for U.S. Senate in Kansas or focus on your day job,” *Kansas City Star*, Oct. 25, 2019.

<sup>10</sup> @StateDept, Twitter, Oct. 25, 2019, 4:58pm, “@SecPompeo and @IvankaTrump visited @WSUTech and saw how Wichita is helping to grow the American economy by equipping Americans with the necessary skills needed to be competitive in the international arena. <https://go.usa.gov/xpaUS>,” <https://twitter.com/StateDept/status/1187835879068442625?s=20>.

<sup>11</sup> Ellie Kaufman, “6 White House officials found in violation of the Hatch Act,” *CNN*, Dec. 3, 2018; Peter Baker, “Trump is Urged to Fire Kellyanne Conway for Hatch Act Violations,” *The New York Times*, June 13, 2019.

I also ask that you act promptly on your findings and report to my staff on any steps you are taking as well as any recommendations that you deem appropriate.

Sincerely,

A handwritten signature in blue ink that reads "Robert Menendez." The signature is written in a cursive, flowing style with a period at the end.

Robert Menendez  
Ranking Member